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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,975	02/27/2002	Brent S. Nelson	876P148	6913

47050 7590 04/18/2006

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/083,975	NELSON, BRENT S.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2005 and 30 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The DeGroff et al reference (6,554,146) has been withdrawn in view of the declaration filed under 37CFR1.131.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 32, 33, 34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ota et al (5,222,615) in view of Leigner (5,092,474), Tobias et al (5,762,221) and Ogg (6,044,997), further in view of Sugiura (4,749,092), Ota (5,238,129), Brody(5,740,934), Hayashi (4,877,141), and Welker(3,923,178), and further in view of Wiley Encyclopedia of Packaging Technology (hereinafter called "Wiley").

As noted previously, in regard to claim 1, Ota et al ('615) discloses a plastic container capable of hot filling comprising a bell portion, a body portion and a base portion wherein the bell portion includes a neck for passage of a hot filled food product and a shoulder portion between said neck and body portion wherein the body portion has panel sections and corners (the body portion being generally rectangular, including four - or more - panels), wherein each of the panels is flexible and substantially flat, each panel section exhibiting flexibility to move between a bowed and a planer configuration in response to temperature changes, said container further comprising means for isolating the panel sections (i.e., the shoulders or ledges shown in fig. 1) from the bell portion and the base to permit the panel sections to have sufficient flexibility to move between the bowed and planar configurations to act as a vacuum seal. Note that,

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as disclosed, applicant discloses that these are elevated ridges and the specification only states that the ridges "isolate" the panel section and allow the panel section to "act" as vacuum panels. Ota et al ('615) teaches ridges above and below the panels that isolate the panels and the panels do "act" as vacuum panels. Thus, Ota et al discloses this structure. See also Leigner ('474), who discloses elevated ridges with inflection lines between the ridges and the vacuum panels and Tobias et al ('221) and Ogg ('997) who disclose ridges isolating vacuum panels from the bell portion and base which ridges also function as label bumpers which is another function of the ridges disclosed by applicant. Thus, the art taken as a whole teaches it would have been obvious to employ the ridge structure for applicants' intended function. Claim 1 now recites that the body portion consists essentially of panel sections and corners. Ota et al ('615), who disclose collapse panels (#13) in each side of the body portion with the rest of the body portion being essentially the corner portions (Ota et al's "lands") is seen to read on the recitation "consisting essentially of panel sections and corners". Note, too, that Ota et al ('615) discloses that the panel "preferably" contains one or more reinforcing ribs so that the panels can be employed without the ribs. Sugiura ('092), Brody ('934) and Welker ('178) are relied on as further evidence of the conventionality of flat wall vacuum panels whereas Ota ('129) and Hayashi et al ('141) are relied on as further evidence of the conventionality of vacuum panels. Sugiara et al, in particular, clearly and unequivocally disclose a body portion that is intended to flex in response to temperature changes, which causes pressure changes, wherein the body portion consists essentially of flat panel sections and corners (36) and nothing else. Thus, although Ota et al ('615) is

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considered to teach the recitation "consists essentially of panel sections and corners, it would have been obvious to modify Ota et al ('615) and substitute one conventional body containing collapsible panel system for another conventional body containing collapsible panel system for its art recognized and applicants intended function of allowing the container to undergo pressure changes without the container suffering permanent deformation or damage. Claim 1 also now recites that the corners are "smooth". It does not appear that this word is defined. What does smooth mean – the opposite of "rough"? It would appear that the corners of Ota et al ('615) are "smooth". In any case, Sugiara et al, who discloses a body consisting essentially of portion of flat panels and corners which are rounded. In regard to the changes to claim 38, as noted previously, the art taken as whole, teaches four sides. Wiley Encyclopedia of Packaging Technology is relied on as further evidence of the conventionality of the architecture of the plastic bottle; i.e., a flat body portion with upper and bottom portions that isolates the body. See e.g., p83., fig 1, the leftmost bottle in front and the bottle to the right of the dark bottle. In regard to claims 6-8, Wiley Encyclopedia discloses it is well established to employ polypropylene in plastic bottles that are hot fillable. See, in this regard, for example, fig. 4 of Wiley.

Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley Encyclopedia of Packaging Technology in view of applicant's admission of the prior art, further in view of Visioli ('901) and Wright et al ('353). Wiley has been substituted for De Groff et al; the latter having been sworn behind in the 37CFR 1.131 declaration. Wiley is being relied on for exactly the same reasons that De Groff et al had

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been relied on in the Office action mailed July 15, 2004. That is, Wiley discloses that a seven layer hot fillable bottle, comprising polypropylene layers, adhesive layers, and conventional barrier layers is notoriously conventional in the art.

Claims 21-31 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 6-8 above, and further in view of applicant's admission of the prior art, Visioli and Wright who are applied for the reasons given above.

All of applicants' remarks filed 9/26/05 have been fully and carefully considered but are not found to be convincing. The amendment addresses the references separately as if they were applied alone, in vacuum. The references are applied in combination under 35USC103. As discussed previously, applicant has combined a series of conventional expedients, i.e., bell shape, flat panels, ridges, etc. employed them for their well known and intended function, and derived no new or unexpected result there from. The art taken as a whole disclose bottles which flex with pressure change and include a bell portion a body portion and a bottom portion. The art taken as a whole also teaches that the panel sections of the body portion can be isolated from the bell portion and the bottom portion. The art taken as a whole also teaches flat flex panels, and that the panels can be devoid of any surface discontinuities or they can contain various ribbing for reinforcement. In either case, the art taken as a whole, and one would expect, that the flex panels would flex under differential pressure and prevent damage to the plastic container whether the panels had ribs or not. In fact, when one views the art taken as a whole, the clear message one gets is that the

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reinforcement to the panels was an improvement to the earlier panels without reinforcement. The art makes it clear that the panels prevents damage in either case due to pressure differentials; the reinforcement being added to primarily reinforce against vertical stacking loads. It is urged that Ota ('615) teaches ribs but he also teaches ribs are not necessary. It is urged that Sugiura employs a separate label area eight sides and eight corners. This urging is directed to limitations not found in at least some of the claims. Sugiura is also being relied on as a secondary reference to modify Ota et al ('615) to teach applicant is not the first to provide a body portion with flat flex panels and rounded corners. Brady would not have to teach a hot fillable bottle for it to be a pertinent reference since hot fillable bottles are shown by other references and since the issue of bottle damage due to pressure differential is a generic problem regardless of the source of the pressure differential. The amendment has further examples of urging limitations not found in at least some of the claims such as the label issue. Also, the surface one chooses to place the label on is seen to have been an obvious matter of choice. For example, a continuous round surface is more practical than one that has flatter sides with rounded corners since the former would provide a smoother surface contact.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
4/14/06



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